REYNALDO VILLAFUERTE AND PERLITA T. VILLAFUERTE, PETITIONERS, VS. HON. COURT OF APPEALS, EDILBERTO DE MESA AND GONZALO DALEON, RESPONDENTS.

G.R. NO. 134239. May 26, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 41871 which affirmed, with modification, the decision[2] of the Regional Trial Court, Branch 55, Lucena City, in Civil Case No. 90-11 entitled, "Reynaldo C. Villafuerte and Perlita Tan Villafuerte v. Edilberto De Mesa and Gonzalo Daleon."

The facts, as established by the Court of Appeals, follow:

> Appelees – the spouses Reynaldo C. Villafuerte and Perlita Tan-Villafuerte – operated a gasoline station known as Peewee's Petron Powerhouse Service Station and General Merchandise on the premises of three (3) adjoining lots at the corner of Gomez Street and Quezon Avenue in Lucena City. One of these lots, Lot No. 2948-A with an area of 575 square meters, is owned by several persons, one of whom is appellant Edilberto de Mesa, while the other lot, Lot 2948-B with an area of 290 square meters, is owned by appellant Gonzalo Daleon and his brother Federico A. Daleon. The remaining lot belongs to Mrs. Anicia Yap-Tan, mother of appellee Perlita Tan-Villafuerte.
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> Appellants Edilberto de Mesa and Gonzalo Daleon acquired their respective lots subject to the lease by Petrophil Corporation which had built thereon the gasoline station being managed by the Villafuerte couple. When the lease of Petrophil Corporation expired on December 31, 1988, the Villafuertes obtained a new lease on Lot No. 2948-A from appellant Edilberto de Mesa for a period expiring on December 31, 1989, thus:.
>
> "1 – This lease will be for a period of one (1) year only, from January 1, 1989 and will terminate on the 31st of December 1989 at a monthly rental of FOUR THOUSAND PESOS (P4,000.00)." (Exhibit "1-A-1" De Mesa).
>
> As regards Lot 2948-B of the Daleon brothers, the Villafuertes were not as lucky. For, instead of obtaining a lease renewal, what they received were demand letters from the brothers' counsel ordering them to vacate the premises. Instead of complying therewith, the Villafuertes simply ignored the demand and continued operating the gas station (Exhibits "3-B", "3-C" and "3-F", Daleon).
>
> On May 9, 1989, in the Office of the Barangay Captain of Barangay Tres, Lucena City, a complaint for ejectment was filed by Gonzalo Daleon against the Villafuertes (Exhibit "6", Daleon). Evidently, no settlement was reached thereat, as shown by a certification to file action issued by the lupon.
>
> With their problem with the Daleon brothers far from over, the Villafuertes were apt for another one; their lease contract with Edilberto de Mesa was not renewed when it expired on December 31, 1989. Nonetheless, and duplicating what they had done in the case of the property of the Daleon brothers, the spouses continued to operate their gasoline station and other businesses on the lot of de Mesa despite the latter's demand to vacate.

What transpired next lays at the core of the instant controversy.

It appears that in the early morning of February 1, 1990, appellants Edilberto de Mesa and Gonzalo Daleon, with the aid of several persons and without the knowledge of the Villafuertes, caused the closure of the latter's gasoline station by constructing fences around it.

The following day – February 2, 1990 – the Villafuertes countered with a complaint for damages with preliminary mandatory injunction against both Edilberto de Mesa and Gonzalo Daleon. Docketed in the court below as Civil Case No. 90-11, the complaint seeks vindication for the alleged malicious and unlawful fencing of the plaintiffs' business premises (Records, pp. 1-6).

Invoking their status as owners of the withheld premises, the defendants admitted in their respective answers having caused the fencing of the plaintiffs' gasoline station thereat but reasoned out that they did so on account of the plaintiffs' refusal to vacate the same despite demands.

After hearing the parties in connection with the plaintiffs' application for a writ of preliminary mandatory injunction, the lower court, in its order of May 23, 1990, ruled that with the expiration of the lease on the defendants' property, the plaintiffs have no more right to stay thereon and, therefore, cannot pretend to have a clear and unmistakable right to an injunctive writ and accordingly denied their application therefore (Rec., p. 186). In a subsequent order of July 30, 1990, the same court denied the Villafuertes' motion for reconsideration (Rec., p. 237).

Later, with leave of court, the Villafuertes amended their complaint to allege, among others, that the complained acts of the defendants cost them the following items of actual damages:

a)

Daily Sales (4000-5000 lts.) at .35¢lt. mark-up, P1,750 x 270 days

P472,500.00

b)

Storage Fee of POL (Petroleum, Oil & Lubricants) Recom 4 at 5% for 100,000 lts. = 5000 lts. X 3 quarters x P6.00/lt.

90,000.00

c)

Tires, Batteries, Accessories (TBA) Gen. Merchandise Sales, P50,000/mo. 20% mark-Up = P10,000 x 9 months

90,000.00

d)

Hauling of Petroleum products for Peewee's Petron Powerhouse, 2 trips weekly, P1,500 X 8 trips/mo. X 9 months

108,000.00

e)

Hauling of Petroleum products for military 7 trips/qtr., P1,500/trip x 21 (3 qtrs.)

31,500.00

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f)

Balloon Business (Sunshine Balloons)
P50,000.00 capital, P6,000/mo. Income
TOTAL LOSS

200,000.00

g)

Uncollected Debts

619,030.61

h)

Uncollected Checks

37,449.05

i)

Merchandise Inventory as of July 25, 1990, P141,036.50 value, 50% damaged

70,518.25

j)

Damaged Office Equipments

30,000.00

k)

Stampitas (Religious Articles) and other Hermana Fausta Memorial Foundation, Inc. printed matters entrusted in my care,
totally damaged by rain and termites

5,000.00

l)

Products lost in 4 underground tanks

249,805.00

m)

Interest payments to RCBC (Rizal Commercial Banking Corporation) for additional loan availed of to pay off products acquired on
credit from Petron Corp. but were held inside gas station

172,490.53

TOTAL --

P2,176,293.44

(Rec., pp. 290, 300)

The amended complaint thus prayed for the following reliefs:

> "WHEREFORE, it is respectfully prayed of this Hon. Court that judgment be rendered in favor of the plaintiffs:A - Immediately ordering the issuance of a writ of preliminary mandatory injunction against the defendants commanding them and any person acting in their behalf to forthwith remove the fence they have constructed around the premises in question, and after trial making the said injunction permanent.B - Ordering the defendants to pay jointly and severally the plaintiffs the following:1) Moral damages equivalent to not less than P200,000.00;2) Exemplary damages in the amount of P50,000.00;3) Attorney's fee in the amount of P60,000.00 plus twenty-five percent (25%) of the amount of damages to which plaintiffs are entitled; and4) Litigation expenses in this instance in the amount of P10,000.00C - Requiring the defendants to pay jointly and severally actual damages representing unrealized income and profits as well as losses referred to in paragraphs 10 and 12 hereof in such amount as may be shown in evidence during the hearing.D - Granting the plaintiffs such other just and equitable remedies to which they may be entitled under the law and equity." (Orig. Rec., pp. 292-293).

As later events disclosed, the defendants resumed possession of the premises in question on January 25, 1991 (Rec., p. 333). Four (4) days later, they obtained a judgment by compromise from the Municipal Trial Court in Cities, Lucena City in connection with the suit for ejectment they earlier filed thereat against Petrophil Corporation. In that judgment, Petrophil bound itself to remove the materials and equipment related to the operation of the gasoline station on the subject premises. (Rec., pp. 355-356).

After the parties herein had presented their respective evidence, the lower court came out with the decision now under review. Dated November 13, 1990, the decision dispositively reads:

> "WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and ordering the defendants Edliberto de Mesa and Gonzalo Daleon to pay, jointly and severally, plaintiffs the following:
>
> - Actual damages in the total amount of TWO MILLION ONE HUNDRED SEVENTY SIX THOUSAND AND TWO HUNDRED NINETY THREE PESOS AND FORTY FOUR CENTAVOS (P2,176,293.44);
>
> - Moral damages in the amount of P200,000.00;
>
> - Exemplary damages in the amount of P50,000.00;
>
> - P50,000.00, as and for attorney's fees; and
>
> - Costs of suit.
>
> SO ORDERED" (Rec., pp. 408-414).[3]

The trial court ruled that with the continued occupation by petitioners of the two lots belonging to private respondents, despite the expiration of the lease contracts over the same, petitioners had become "undesirable lessees."[4] However, it was improper for private respondents to resort to fencing their properties in order to remove petitioners from the premises in the light of the clear provision of the Civil Code on the matter, to wit:

> Art. 536. In no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto. He who believes that he has an action or a right to deprive another of the holding of a thing, must invoke the aid of the competent court, if the holder should refuse to deliver the thing.

Having disregarded the plain requirement of the law, private respondents were held accountable to petitioners for the various damages prayed for by petitioners in their amended complaint.

In due time, private respondents filed their respective appeals before the Court of Appeals which affirmed, with modification, the decision of the trial court. The dispositive portion of the appellate court's decision reads:

> WHEREFORE, the decision appealed from is MODIFIED by holding the appellants jointly and severally liable to the appellees for P50,000.00 as exemplary damages and for P27,000.00 as actual damages, itemized as follows:
>
> - detention of the records: P7,000.00;
>
> - detention of the merchandise: P10,000.00;
>
> - value of the damaged merchandise and religious items: P5,000; and
>
> - detention of offices equipment: P5,000.00,
>
> and by holding the appellees jointly and severally liable for rental to appellants Edilberto de Mesa and Gonzalo Daleon in the amount of P5,500.00 and P39,000.00, respectively.
>
> The deficiency in the payment of the docket fees, to be computed by the clerk of court of the lower court, shall constitute a lien on this judgment.[5]

In adjudging private respondents liable for damages, the Court of Appeals substantially ruled that:

- Private respondents could not invoke the doctrine of self-help contained in Article 429 of the Civil Code[6] reasoning that the doctrine finds no application when occupation was effected through lawful means such as in this case where petitioners' possession of the lots owned by private respondents was effected through lease agreements;

- Petitioners' continued unauthorized occupation of private respondents' properties may have been illegal, however, it was incumbent upon private respondents to abide by the express provision of Article 536 of the Civil Code requiring recourse to the proper court prior to ousting petitioners from their (private respondents') lots;

- On the matter of insufficient docket fees paid by petitioners during the institution of this action, the Court of Appeals declared that "whatever deficiency there may be in the docket fees can be levied from the amount that may be awarded the appellees (petitioners herein)"[7] and that private respondents were already estopped from assailing the jurisdiction of the trial court;

- Private respondents could not invoke the principle of damnum absque injuria as this doctrine only applies "when the loss or damage does not constitute a violation of a legal right or amounts to a legal wrong"[8] and not to this case where private respondents clearly violated the law by unilaterally displacing petitioners from the subject premises;

- On the issue of actual damages, the appellate court substantially reduced the amount of actual damages awarded by the court a quo upon the ground that petitioners failed to substantiate their claims thereto except for the detention of petitioners' records of their receivables, various merchandise, damaged goods, religious items, and office equipment;

- As for the propriety of awarding moral damages to petitioners, the Court of Appeals held that petitioners are not entitled to this form of damage as this case does not fall within Article 2219 of the Civil Code;

- Although Article 2219 of the Civil Code encompasses incidents which may fall within the purview of Article 21 of the Civil Code, the latter, being a rule based on equity, necessitates the claimant to come to court with clean hands which cannot be said of petitioners who continued to occupy the lands belonging to private respondents without the authority of a subsisting lease agreement;

- Private respondents are nevertheless liable for exemplary damages for having taken the law into their own hands by fencing the premises of the Petron gasoline station operated by petitioners instead of seeking redress from the

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proper court as mandated by Article 536 of the Civil Code; and

- Petitioners are liable to pay private respondents for the unpaid rentals from the time the lease agreements over the subject properties expired until 01 February 1990 when private respondents constructed the fence.

Dissatisfied with the ruling of the Court of Appeals, petitioners are now before us raising, in the main, the issue of whether the appellate court erred in substantially reducing the amount of damages earlier awarded to them by the trial court.

Petitioners insist that the appellate court "resorted to assumptions, inferences, surmises and conjectures in disallowing certain items of actual damages like lost petroleum products valued at P249,805.00, loss of value of merchandise detained for a quite a long time (sic) in the fenced premises and uncollected debts as against the positive testimony of petitioner Perlita Villafuerte which remained unrebutted and uncontested even on appeal."[9] They also allege that the list of unrealized income, collectibles and damages prepared by petitioner Perlita was based and ably supported by documents.

Petitioners also maintain that the Court of Appeals erred in finding that they came to court with "unclean hands," thus, depriving them of entitlement to moral damages. According to petitioners, their continued occupation of private respondents' properties was based on their belief that their lease contract with private respondent De Mesa was modified and extended whereas private respondent Daleon had verbally agreed to allow them to continue with their possession of his lot for as long as the Petron Corporation's equipment remain in the premises.

Finally, petitioners argue that the trial court was correct in awarding in their favor attorney's fees in the amount of P50,000.00 as they were compelled to engage the services of counsel in order to seek vindication from the arbitrary action of private respondents.

After a considered review of the records of this case, we resolve to affirm, with modification, the decision of the Court of Appeals.

Both the trial court and the Court of Appeals concluded that the lease contracts between petitioners and private respondents over the latter's respective lots had already expired. There was also a congruence of findings that it was wrong for private respondents to fence their properties thereby putting to a halt the operation of petitioners' gasoline station. To this, we agree.

Article 536 of the Civil Code previously quoted explicitly provides for the proper recourse of one who claims to be entitled to the possession of a thing. When private respondents personally took it upon themselves to evict petitioners from their properties, which act was in clear contravention of the law, they became liable "for all the necessary and natural consequences of [their] illegal act."[10]

As expected, petitioners instituted this action praying that private respondents be held liable for actual damages, moral damages, exemplary damages, attorney's fees, and costs of litigation. We shall resolve their right to these damages in seriatim.

Actual or compensatory damages are those awarded in order to compensate a party for an injury or loss he suffered. They arise out of a sense of natural justice and are aimed at repairing the wrong done.[11] Except as provided by law or by stipulation, a party is entitled to an adequate compensation only for such pecuniary loss as he has duly proven.[12] It is hornbook doctrine that to be able to recover actual damages, the claimant bears the onus of presenting before the court actual proof of the damages alleged to have been suffered, thus:

> A party is entitled to an adequate compensation for such pecuniary loss actually suffered by him as he has duly proved. Such damages, to be recoverable, must not only be capable of proof, but must actually be proved with

> a reasonable degree of certainty. We have emphasized that these damages cannot be presumed and courts, in making an award must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne.[13]

We have exhaustively perused the records of this case and thus conclude that petitioners have miserably failed to proffer evidence capable of sustaining their plea for actual damages. We note that when petitioner Perlita was directly examined with respect to her unrealized income[14] for the following matters, namely: daily sales of various petroleum products;[15] storage fee of RECOM IV's petroleum, oil, and lubricants;[16] sales of tires, batteries, accessories, and general merchandise;[17] hauling of petroleum products for Peewee's Petron Powerhouse by the gasoline tankers owned by petitioners;[18] hauling of petroleum products for the military;[19] and petitioner Perlita's balloon business which she conducted within the premises of the fenced gasoline station,[20] she repeatedly testified that she arrived at these claimed amounts based on the average of her sales for the month of January 1990, the number of trips undertaken by their tankers, and average volume of the gasoline deposit for RECOM IV. Her testimony on these matters went as follows:

> Atty. CAMALIGAN:
>
> May I ask that this List of Unrealized Income, Collectibles and Damages from Febrauary 1, 1990 to October 30, 1990 be marked as Exhibit AA.
>
> . . .
>
> Q:
>
> Will you explain to the court why this list you made is up to October 30, 1990?
>
> A:
>
> I prepared this list until October 10, 1990 in preparation for our first hearing sometime in November, sir.
>
> Q:
>
> I am calling your attention to No. 1 which is I quote, "Daily Sales (4,000 to 5,000 liters) at P0.035 per liter mark up " P1,750.00 by 270 days amounting to P472,500.00? will you explain to the court how you incurred this damage?
>
> (A):
>
> After the closure of our gasoline station that was February 1, 1990 and then until September, 1990 is nine (9) months and that is 270 days. I went thru my sales for January and the average sales (is) 4,000 to 5,000 liters and so for our daily sales of 4,000 to 5,000 liters sale at P0.35 centavos mark-up, I got P1,750.00 daily so that is times 270 days until September 1990, the total is P472,500.00, sir.
>
> COURT: That is gross?
>
> A:
>
> Yes, your Honor.
>
> COURT: What about the net income to be realized?
>
> A:
>
> Your Honor, we will deduct from here the salaries and wages of the gasoline boys and electric bill, maybe P0.25 centavos per liter.

COURT: Proceed.

Q:

Is the mark-up of P0.35 centavos per liter thru (sic), irrespective of amount of gasoline or value of gasoline per liter?

A:

We have different kinds of petroleum products, extra, regular and diesel and the average mark-up is thirty-five (35) centavos.

. . .

Q:

Calling your attention to No. 2 in the list which refers to storage fee of petroleum, oil and lubricant from RECOM IV amounting to a total of ninety thousand pesos (P90,000.00) will you kindly explain how you arrived at this amount?

A:

The military, PC/INP RECOM IV which is stationed at Camp Nakar has entered into an agreement with us to deposit their petroleum, oil and lubricant for every quarter, sir.

Q:

Under what condition was that deposit made for?

A:

That they will be able to withdraw the said products for a certain storage fee, sir, and the storage fee is 5% which would cover disposing the products and also certain percent of evaporation.

COURT: Five percent of what?

A:

Five percent of the number of liters deposited with us so that if they deposited one hundred thousand (100,000) liters we are paid in terms of gasoline also, five thousand (5,000) liters.

Q:

What was the average volume of deposit made by the RECOM IV?

A:

It is on a quarterly basis, that is one hundred thousand (100,000) liters quarterly, sir.

Q:

On item 3 referring to tires, batteries, accessories, general merchandise is listed an amount of ninety thousand (P90,000.00) pesos as your losses, will you please explain how you incurred such losses?

A:

Aside from petroleum products we also sell accessories for the motoring public and they are in kinds like tires, batteries and some additives, how do you realize income out of this? (sic)

A:

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> We have 20% mark-up on the merchandise and last January 1990 I average fifty thousand (P50,000.00) pesos gross income on the general merchandise so for 20% mark-up that is more or less ten thousand (P10,000.00) pesos and for nine (9) months that is ninety thousand (P90,000.00) pesos, sir.
>
> Q:
>
> In item No. 4 appearing in your list you listed a total amount of one hundred eight thousand (P108,000.00) pesos, for hauling of petroleum products for Peewee?s Petron Powerhouse, will you explain to the court this hauling?
>
> A:
>
> My husband and I run a fleet of gasoline tankers and they are hauling petroleum products for our gasoline stations and for the military accounts. We average two (2) deliveries every week so this is already a net of one thousand five hundred (P1,500.00) pesos per delivery. It is two thousand eight hundred (P2,800.00) pesos per delivery and deducting the salaries of the drivers, the fuel consumption and the depreciation of the tankers, we incur a net of one thousand five hundred (P1,500.00) pesos per trip. Every month we incur at least eight (8) trips and that is one thousand five hundred (P1,500.00) pesos times eight (8) trips times nine (9) months and I got one hundred eight thousand (P108,000.00) pesos total.
>
> Q:
>
> Do you own them?
>
> A:
>
> Yes, sir.
>
> Q:
>
> In item No. 6 you listed Balloon Business under Sunshine Balloon, you have given a total amount of two hundred thousand (P200,000.00) pesos as your losses here, will you please explain to the Court how you incurred these losses?
>
> . . .
>
> A:
>
> Inside the gasoline station we also operate a balloon business and we have invested fifty thousand capital on this balloon business. This business has been thriving for several years and we usually incur six (6) thousand monthly income from said business, sir. Now that the gasoline station was closed with all the equipments of the balloon business inside also, we have totally lost the market for the balloon business and I feel that two hundred thousand (P200,000.00) pesos would have to be paid for the total loss of the business. [21]

Noticeably, petitioner Perlita's testimony was replete with claims that her unrealized income, as far as these items were concerned, were based on the "average." Except, however, for the record of daily petroleum sales for the month of January 1990,[22] petitioners failed to present any evidence that would sufficiently establish their mean income from these business undertakings. In the absence of any corroborative proof, this Court is not bound to award in petitioners' favor the actual damages for items a, b, c, d, e, and f of her alleged unrealized income. Nor can we give premium on the summary of daily petroleum sales for January 1990 prepared by petitioner Perlita as the same is not supported by any competent evidence; at best, said exhibit is self-serving.

Anent the actual damages claimed for the deterioration of the items which remained inside petitioners' office, petitioner Perlita testified that when they were able to retrieve the merchandise from the gasoline station, they noticed that most of them were already defective and so they "valued"[23] the damages thereto at seventy (70%)

of their total value. As for the items entrusted to her by the Hermana Fausta Memorial Foundation of which she was the executive vice president at that time, petitioner Perlita alleged that the amount of five thousand pesos represents the production cost of these materials which the foundation purportedly paid to Imprenta Lucentina. As regards the amount of P30,000.00 sought as actual damages for the damaged office equipment, petitioner Perlita stated before the trial court that she arrived at this figure after computing the acquisition costs of these equipment which she "approximated"[24] to be P35,000.00.

Evidently, in establishing the amount of actual damages for the merchandise inventory, office equipment, and materials owned by the Hermana Fausta Memorial Foundation, petitioners relied solely on their own assessment of the prices of these items as well as the damage thereto purportedly occasioned by the fencing of the gasoline station. This is clearly demonstrated by the inconsistent stance of petitioner Pertlita with regard to the percentage of damaged merchandise stored in the gasoline station, thus:

> ATTY. CAMALIGAN:
>
> Q:
>
> I noticed that the total appearing on page 3 of your merchandize inventory is one hundred forty one thousand thirty six pesos and fifty centavos (P141,036.50) only while in your list, it is ninety eight thousand seven hundred twenty five pesos and fifty five centavos (P98,725.55), will you please explain the same?
>
> WITNESS:
>
> A:
>
> This list with the total amount of one hundred forty one thousand thirty six pesos and fifty centavos (P141,036.50) represent the total value of all the merchandize but then the reason why we have the ninety eight thousand seven hundred twenty five pesos and fifty five centavos (P98,725.55) figure is, this represents seventy percent (70%) of the total amount because when we retrieved the merchandize, we noticed that most of them are already defective, so we valued the damages only seventy percent (70%) of the total value because some of them could still be sold, sir.
>
> ATTY. CAMALIGAN:
>
> Q:
>
> I noticed there is a correction in Item No. 9 from ninety percent (90%) to seventy percent (70%). When did you make that correction?
>
> A:
>
> Only last December 30, 1990 after we have retrieved all the merchandize. I prepared this list on October 31, 1990 not realizing the extent of the real damages to the merchandize but when we retrieved them last December 29 and upon inspection, most of the motor oil have already leaked because of the plastics that were exposed to sun and rain, so we changed the estimate to seventy percent (70%), sir.[25]

Such arbitrary estimations run afoul with our consistent pronouncement that actual or compensatory damages cannot be presumed but must be proved with reasonable degree of certainty.[26] A court cannot simply rely on speculation, conjecture or guesswork as to the fact and amount of damages, but is required to depend upon competent proof that the claimant had suffered and on evidence of the actual amount thereof.[27] Failing in this regard, we resolve to delete the award of actual damages rendered by the Court of Appeals with respect to these items.

Similarly, we rule that petitioners are not entitled to the total amount of the 17 checks issued in their favor by their

customers and to the amount of uncollected debts owed to them by their patrons. Petitioners maintain that their customers were used to coming to their gasoline station in order to settle their obligations but were prevented from doing after the 01 February 1990 incident. They therefore would like to hold private respondents accountable for these receivables. This, we can not grant.

The records indicate that petitioners filed before the trial court a motion to allow them to enter the gasoline station subject of this dispute in order to make an inventory of their property that were locked inside and to remove those they needed for their personal use.[28] Among the items removed from the gasoline station were the receipts evidencing petitioners' receivables from their customers[29] as well as the 17 uncollected checks.[30] Obviously, after the court-approved ocular inspection conducted on 24 July 1990 and 25 July 1990, petitioners were already in possession of the evidences of credit of their customers. There was nothing, not even the closure of their gasoline station, which stood in the way of petitioners' exerting earnest efforts in going after their debtors.

Petitioners likewise seek to be compensated for the value of the petroleum products allegedly lost from the four underground tanks between the period 01 February 1990 until 25 July 1990 when an ocular inspection was conducted within the disputed property. According to petitioners, after they compared the volume of the tanks' contents as of the evening of 31 January 1990 with the dipstick reading on 25 July 1990, they discovered that they had lost thousands of liters of petroleum products. On this point, we quote with approval the conclusion of the Court of Appeals, to wit:

> The appellees[31] failed to adduce convincing evidence that appellants are the ones responsible for the loss of the petroleum products in the four (4) underground tanks (item "1," paragraph 10 of Amended Complaint). Although the premises which were fenced by the appellants[32] adjoin the lot of Perlita's mother and are even secured by appellees' guard, the appellees did not present anyone to testify on the fact of loss of said gasoline products. Instead, they chose to rely on Perlita's bare assertion that she lost P249,805.00 in terms of petroleum products that allegedly disappeared. The sheer volume of the missing fuel makes it difficult for the pilferer to commit the deed without attracting attention. An unsubstantiated claim of loss, more so of such a dimension, cannot merit an award therefor.[33]

Finally, with respect to the interest payments to the Rizal Commercial Banking Corporation (RCBC), petitioners maintain that because of the fencing of their gasoline station on 01 February 1990, they were forced to obtain a loan from RCBC in order to pay off their obligations to different suppliers. This contention was effectively refuted by petitioner Perlita herself when, during her re-direct examination, she admitted that the loan granted by the RCBC was intended for all the businesses that she and her husband, petitioner Reynaldo, were maintaining.[34] It would, therefore, be iniquitous to charge private respondents for the interest payments for this loan the proceeds of which were utilized to finance petitioners' various businesses and not solely the settlement of petitioners' obligations to the suppliers of Peewee's Petron Powerhouse. In the absence of actual proof as to how much of the RCBC loan was really used to pay the creditors of the closed gasoline station, this Court can not affirm petitioners' right to be compensated for the amount of interest payments they have made to the RCBC.

We find, however, that an award of temperate damages to petitioners is in order. In lieu of actual damages, temperate damages, which are more than nominal but less than compensatory damages, may be awarded where the court finds that some pecuniary loss had been suffered by the claimant but its amount cannot be proved with certainty. Undoubtedly, pecuniary loss had been inflicted upon petitioners in this case, however, due to the insufficiency of evidence before us, we cannot place its amount with certainty. In this regard, we find the amount of P50,000.00 to be sufficient.

Petitioners also assail the removal by the Court of Appeals of the moral damages previously ordered by the trial court. They argue that contrary to the findings of the appellate court, they came to court with "clean hands" as

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they believed that the lease contract with private respondent De Mesa was modified and extended. At the same time, they contend that they had a verbal understanding with private respondent Daleon wherein the latter permitted them to remain in his lot for as long as Petron Corporation was not removing its equipment. Further, petitioners contend that under Article 2219 of the Civil Code, this Court had awarded moral damages in instances where the claimants were victims of capricious, wanton, oppressive, malicious, and arbitrary acts such as petitioners in this case. On this issue, we agree in the findings of the Court of Appeals that:

> The Court must have to disallow the lower court's award of moral damages. The concept of moral damages, as announced in Article 2217 of the Civil Code, is designed to compensate the complainant for his physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury occasioned by the defendant's wrongful act or omission. Article 2219 of the same Code specifies the cases where moral damages may be awarded, to wit:
> Art. 2219. Moral damages may be recovered in the following and analogous cases:
>
> (1)
>
> A criminal offense resulting in physical injuries;
>
> (2)
>
> Quasi-delicts causing physical injuries;
>
> (3)
>
> Seduction, abduction, rape, or other lascivious acts;
>
> (4)
>
> Adultery or concubinage;
>
> (5)
>
> Illegal or arbitrary detention or arrest;
>
> (6)
>
> Illegal search;
>
> (7)
>
> Libel, slander or any other form of defamation;
>
> (8)
>
> Malicious prosecution;
>
> (9)
>
> Acts mentioned in article 309;
>
> (10)
>
> Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.
>
> The parents of the female seduced, abducted, raped or abused, referred to in No. 3 of this article, may also recover moral damages.
>
> The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this

article, in the order named.

Noticeably, none of the foregoing instances has any relevant bearing to the case at bench. While Article 2219 comprehends the situation in Article 21 of the Code, whereunder "[A]ny person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damages," the appellees cannot benefit from it. The right to recover moral damages under Article 21 is based on equity, and those who come to court to demand equity must come with clean hands (Garciano v. Court of Appeals, 212 SCRA 436 citing Padilla, CIVIL CODE ANNOTATED, Vol. 1, 1975 Ed., p. 87). The appellees knew that their lease had expired. Yet, despite such awareness, they persisted in their unauthorized occupancy of appellants' property. Being partly responsible for their present predicament which is very much within their power to avoid, appellees cannot receive compensation for whatever mental anguish or suffering they went thru.[35]

Similarly, we uphold the award of P50,000.00 as exemplary damages in order to deter similarly minded individuals from pursuing the course of action taken by private respondents. The law on this matter is clear: "(h)e who believes himself entitled to deprive another of the possession of a thing, so long as the possessor refuses delivery, must request the assistance of the proper authority."[36] Petitioners' arbitrary conduct of fencing their properties under the claim that they own the same brazenly violates the law and circumvents the proper procedure which should be obtained before the court.

This Court likewise adopts the conclusion reached by the Court of Appeals that petitioners do not deserve the award of attorney's fees for it was precisely their unfounded insistence to stay on private respondents' properties that precipitated this suit.

WHEREFORE, the Decision of the Court of Appeals dated 31 March 1998, which modified the Decision dated 13 November 1992 of the Regional Trial Court, Branch 55, Lucena City, and its Resolution of 17 June 1993 denying reconsideration are hereby MODIFIED as follows:

- The award of Twenty-Seven Thousand Pesos (P27,000.00) as actual damages in favor of petitioners Reynaldo and Perlita Villafuerte is deleted; and

- Private respondents Edilberto De Mesa and Gonzalo Daleon are held jointly and severally liable to pay petitioners the amount of Fifty Thousand Pesos (P50,000.00) as temperate damages.

The remainder of the same Decision and Resolution of the Court of Appeals are hereby AFFIRMED. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Callejo, Sr., concur.
Tinga, J., out of the country.

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[1] Penned by then Associate Justice Cancio C. Garcia (now a member of this Court) with Associate Justices Conchita Carpio Morales (now also a member of this Court) and Portia Aliño Hormachuelos concurring.

[2] Penned by Judge Eleuterio F. Guerrero.

[3] Rollo, pp. 22-27.

[4] Records, p. 413.

[5] Rollo, p. 37.

[6] Article 429 of the Civil Code provides: "The owner or lawful possessor of a thing has the right to exclude any

person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property."

[7] Rollo, p. 30; citing the case of Pantranco North Express, Inc. v. Court of Appeals, G.R. No. 105180, 05 July 1993, 224 SCRA 477.

[8] Ibid.; citing Globe Mackay and Radio Corporation v. Court of Appeals, G.R. No. 81262, 25 August 1989, 176 SCRA 778.

[9] Rollo, p. 10; Petition for Review, p. 8.

[10] Municipality of Moncada v. Cajuigan, No. 7048, 12 January 1912, 21 Phil. 194.

[11] Terminal Facilities and Services Corporation v. Philippine Ports Authority, G.R. Nos. 135639 and 135826, 27 February 2002, 378 SCRA 82.

[12] Article 2199, Civil Code.

[13] Del Mundo v. Hon. Court of Appeals, et al., G.R. No. 104576, 20 January 1995, 240 SCRA 348.

[14] For the period 01 February 1990 up to 30 October 1990.

[15] Item a, paragraph 10 of the Amended Complaint; Records, p. 290.

[16] Item b, paragraph 10 of the Amended Complaint; Ibid.

[17] Item c, paragraph 10 of the Amended Complaint; Ibid.

[18] Item d, paragraph 10 of the Amended Complaint; Ibid.

[19] Item e, paragraph 10 of the Amended Complaint; Ibid.

[20] Item f, paragraph 10 of the Amended Complaint; Ibid.

[21] TSN, 10 January 1991, pp. 18-28.

[22] Exhibits "P," "P-1," and "P-2."

[23] TSN, 11 January, 1991, p. 20.

[24] TSN, 11 January 1991, p. 62.

[25] TSN, 11 January 1991, pp. 19-21.

[26] Philippine Airlines, Inc. v. Court of Appeals and Pedro Zapatos, G.R. No. 82619, 15 September 1993, 226 SCRA 423.

[27] British Airways, Inc. v. The Honorable Court of Appeals, et al., G.R. No. 92288, 09 February 1993, 218 SCRA 699.

[28] Motion dated 17 July 1990; Records, p. 228.

[29] TSN, 10 January 1991, p. 34.

[30] TSN, 11 January 1991, p. 16.

[31] Petitioners herein.

[32] Private respondents herein.

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[33] Rollo, p. 34.

[34] TSN, 31 January 1991, pp. 58-59.

[35] Rollo, pp. 34-35.

[36] Yuson and De Guzman v. Diaz, No. 17557, 22 July 1921, 42 Phil. 27.

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